KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
JAKARTA, INDONESIA
MUMBAI, INDIA

FACSIMILE
(202) 955-9792
www.kelleydrye.com

DIRECT LINE: (202) 955-9667
EMAIL: mconway@kelleydrye.com

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November 28, 2005

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Federal Communications Commission
Office of Secretary

BY HAND DELIVERY

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Section 63.71 Application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. – **WC Docket No. 05-309; Comp. Pol. File No. 729 - Reply**

Dear Ms. Dortch :

On October 27, 2005, KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. ("KMC") filed the above-referenced Application. Comments were due by November 18, 2005. KMC hereby files its Reply to the comments. Included herewith are an original and six (6) copies of the Reply. Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned at (202) 955-9667.

Respectfully submitted,

Melissa Conway

Melissa S. Conway

Enclosures

cc: Rodney McDonald, Competitive Policy Division, Wireline Competition Bureau

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Federal Communications Commission
Office of Secretary

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	)	
	)	
Section 63.71 Application of	)	WC Docket No. 05-309
KMC TELECOM V, INC. AND	)	Comp. Pol. File No. 729
KMC TELECOM OF VIRGINIA, INC.	)	
	)	

REPLY OF KMC TELECOM V, INC. AND KMC TELECOM OF VIRGINIA, INC.

On October 27, 2005, KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. ("KMC" or "Applicants") filed an application pursuant to Section 214(a) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214, and Section 63.71 of the Commission's Rules, 47 C.F.R. § 63.71, to discontinue their provision of certain domestic telecommunications services – namely, select interstate data services – to their carrier customers (the "Application"). The Application went on public notice on November 4, 2005, and comments were due by November 18, 2005.[1] The following parties filed comments on the Application: Insight Midwest Holdings, LLC ("Insight"), Grande Communications Networks, Inc. ("Grande"), US LEC Acquisition Co. ("US LEC") and Vonage Network ("Vonage") (collectively, the "Comments"). Absent further Commission action, KMC will be authorized to terminate service to the affected carrier customers as of December 5, 2005. In the Comments, the parties generally indicated that they require more time to transition service to alternate service providers or otherwise allow for continuity of service for their customers. KMC has carefully reviewed the Comments and strongly disagrees that customers are unable to arrange for replacement service

[1] *See* Public Notice, Comments invited on application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. to Discontinue Domestic Telecommunications Services, WC Docket No. 05-309, Comp. Pol. File No. 729, DA 05-2927 (Nov. 4, 2005).

on or before December 5, 2005. As discussed below, all affected customers were provided almost sixty (60) days advance notice of the impending cut-off – a month *more* than required by Commission Rules and ample time to obtain substitute services. Nonetheless, KMC wishes to make sure that its discontinuance of service does not unduly disrupt the ongoing operations of its few remaining customers. Accordingly, KMC has taken steps to temporarily extend its operations, and hereby agrees to extend the date for termination of service to all of its customers by almost thirty (30) days to *January 2, 2006*. This voluntary extension effectively provides all affected customers of almost three months prior notice – ample time for them to arrange for alternate service.

The Applicants reiterate that it was never their intention to voluntarily discontinue the affected services described in the Application. When KMC realized that the discontinuance of service was inevitable, it began to notify the affected carrier customers by telephone on or about October 14, 2005. Then, by notice dated October 26, 2005, Applicants provided written customer notice in accordance with the requirements of Section 63.71(a) of the Commission's Rules. Thus, KMC's customers were effectively provided almost sixty (60) days notice of the impending discontinuance, almost thirty (30) days notice *in excess* of that required by the Commission's Rules. Despite the fact that Applicants' carrier customers will have had almost sixty (60) days notice, KMC is willing to extend the termination date by approximately thirty (30) additional days, to January 2, 2006. This extension will allow customers to have almost three months effective notice prior to the proposed discontinuance.

An extension of the termination date by approximately thirty (30) days, from December 5, 2005 to January 2, 2006, should settle the matter for Grande, US LEC and Insight. In its comments, Grande stated that it would not be able to activate sufficient replacement facilities from other providers for all current routes by December 5, 2006.[2] Grande stated that service interruptions will occur to its customer ISPs and the end-use customers of those ISPs in certain geographic areas "unless the deadline is extended until January 2, 2006."[3] The Applicants have agreed to this extension, not only for the geographic service areas noted in Grande's comments, but for all of KMC's affected domestic services. Presumably there will be no service interruptions for Grande's customers and Grande will no longer be in opposition to KMC's Application. Likewise, US LEC writes that a sixty (60) day notice period is appropriate and requests that KMC's discontinuance be delayed "an additional 30 days at the most."[4] Specifically, US LEC requests a termination date of January 6, 2006 or until all services have been transitioned to another provider, whichever is earlier. Since KMC agrees to extend the termination date by approximately thirty (30) additional days to January 2, 2006, as requested by US LEC, US LEC should be able to transition its services to another provider by that date, thereby no longer having any objection to KMC's Application.

Insight comments that it would be reasonable to require KMC to continue to provide service to Insight for "an additional thirty (30) to sixty (60) days after December 5, 2005" in order for Insight to be able to self-provision the services that KMC currently provides.[5]

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[2] See Response in Opposition of Grande Communications Networks, Inc., In the Matter of Application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. to Discontinue Domestic Telecommunications Service, WC Docket No. 05-309, Comp. Pol. File No. 729, para. 4 (Nov. 11, 2005).

[3] Id. at para. 5.

[4] See Objections of US LEC Acquisition Co., Application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. to Discontinue Domestic Telecommunications Services, WC Docket No. 05-309, Comp. Pol. File No. 729, p. 3 (Nov. 18, 2005).

[5] See Opposition of Insight Midwest Holdings, LLC, In the Matter of Section 63.71 Application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. to Discontinue Domestic Telecommunications Services, WC Docket No. 05-309, Comp. Pol. File No. 729, p. 4 (Nov. 10, 2005).

Specifically, Insight requests a termination date of February 2, 2006.[6] KMC's willingness to extend the termination date to January 2, 2006, approximately thirty (30) days after the original termination date, should appease Insight, especially given that Insight had been on notice of the required discontinuance as of October 17, 2005. Moreover, in discussions with Insight, they have indicated that January 2, 2006 would be a workable discontinuance date. KMC and Insight currently are preparing a joint submission to the FCC indicating that Insight will withdraw its opposition to KMC's Application in exchange for KMC's commitment not to take any discontinuance action until after January 2, 2006. KMC does not believe that a discontinuance of more than sixty (60) days following effective notice to Insight constitutes a "quick exit," but rather a reasonable period of time under the circumstances. Insight argues that its best option is to self-provision the services and facilities that KMC currently provides, and Applicants agree that Insight should have sufficient time to accomplish this transition approximately thirty (30) days after the original termination date of December 5, 2005.

Although KMC believes that it can satisfy the concerns and meet the requests of Grande, US LEC and Insight by extending the termination of service date by an additional approximately thirty (30) days to January 2, 2006, KMC believes that Vonage simply goes too far. In its comments, Vonage submits that a thirty (30) day notice period is "unacceptable and impracticable" and that KMC should be required to continue to provide service "during a reasonable transition period of *at least* 120 days."[7] This request is unworkable. Although the Applicants are amenable to an extension to January 2, 2006, it is not feasible for KMC to extend

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6 Id.

7 See Vonage comments on Application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. to Discontinue Domestic Telecommunications Services, WC Docket No. 05-309, Comp. Pol. File No. 729, p. 2 (Nov. 18, 2005).

the provisioning of service to any date beyond January 2, 2006. KMC contends that Vonage will have almost three months of effective notice of the discontinuance which is a reasonable amount of time to arrange for an alternate service provider. As discussed above, KMC's other customers – including the others who have protested – have proven that arranging substitute service is feasible, and Vonage clearly is able to do the same.

Applicants note that they have been in contact with the affected customers in order to attempt to come to mutually agreeable arrangements for the transitioning of their services. KMC has provided them with information about the identity of KMC's underlying vendors and circuit information as well as letters of authorization ("LOAs") to enable them to contact directly KMC's underlying vendors so that they can attempt to reach agreements with the vendors to themselves pay current amounts in order to keep the critical circuits active for any additional period of time necessary. KMC's efforts to assist its carrier customers in transitioning service together with an additional time period, until January 2, 2005, to arrange for suitable substitutes, should ensure that there is no interruption of service for customers.

Additional questions regarding this application may be addressed to the undersigned or to Melissa Conway, KELLEY DRYE & WARREN LLP, 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036, (202) 955-9667, mconway@kelleydrye.com.

Respectfully submitted,

KMC TELECOM V, INC.
KMC TELECOM OF VIRGINIA, INC.

By:

Mikhael Vitenson
Associate General Counsel
KMC Telecom Holdings, Inc.
1545 Route 206, Suite 300
Bedminster, NJ 07921
Phone: (908) 470-3619
Fax: (908) 719-8774

Dated: November 28, 2005